IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

WHITE LIGHTNING, LLC,
AN ARIZONA LIMITED LIABILITY COMPANY,
Plaintiff/Counterdefendant/Appellee,

v.

WEST COAST ROOFING, LLC,
AN ARIZONA LIMITED LIABILITY COMPANY,
Defendant/Counterclaimant/Appellant.

No. 2 CA-CV 2018-0036
Filed November 21, 2018

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. C20154535
The Honorable Cynthia T. Kuhn, Judge

AFFIRMED IN PART AS MODIFIED; VACATED IN PART AND REMANDED

COUNSEL

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MEMORANDUM DECISION

Judge Brearcliffe authored the decision of the Court, in which Presiding Judge Staring and Chief Judge Eckerstrom concurred.

B R E A R C L I F F E, Judge:

¶1 West Coast Roofing, LLC appeals from the trial court's ruling, after a bench trial, that it breached its contract with White Lightning, LLC and from the damages awarded. For the reasons stated below, we affirm in part, modify the damages award, vacate the award of attorney fees and costs, and remand the case for further proceedings.

Issues

¶2 West Coast Roofing contends the trial court erred in concluding it had breached its contract with White Lightning and in calculating damages. White Lightning contends substantial evidence supports the court's rulings. The issues are whether the court erred in concluding West Coast Roofing had breached the parties' contract by failing to proceed with its work as directed, and whether it erred in determining White Lightning's damages.

Factual and Procedural Background

¶3 We review the evidence, and all reasonable inferences therefrom, in the light most favorable to sustaining the trial court's judgment. *Alliance Marana v. Groseclose*, 191 Ariz. 287, 288 (App. 1997). The following facts, unless otherwise stated, are agreed upon by the parties or are otherwise undisputed.

¶4 In June 2014, White Lightning, as general contractor, and West Coast Roofing, as subcontractor, entered into a contract ("the subcontract") for construction of the El Corredor Apartments ("Project"). The Project was broken down into two phases. Phase I included Buildings 7 through 17, and Phase II included Buildings 1 through 6. Under the original construction schedule, Phase I was set to be completed on December 31, 2014, and Phase II on March 15, 2015. Each phase included sloped, tiled and low-slope (or "flat"), non-tiled, coated roofing systems.

¶5 West Coast Roofing agreed to install roofing systems on multiple project buildings and structures, including eighteen residential buildings, three ramadas, and several garages. Among other obligations, West Coast Roofing was required to purchase all materials, install the roofing systems in accordance with project plans and specifications, and provide the project owner with both materials and labor warranties for the roofing systems. Such warranties included an "extended five (5) year full labor and material warranty" and, for the flat, coated roofs, a "manufacturer[']s ten (10) year warranty stating that an additional coating by year nine (9) will extend warranty by an additional ten (10) years."

¶6 White Lightning, among other obligations, was responsible for providing West Coast Roofing its "construction schedule and schedule of submittals, together with such additional scheduling details as w[ould] enable" West Coast Roofing "to plan and perform" its work "properly." White Lightning was to "promptly notify" West Coast Roofing "of subsequent changes in the construction and submittal schedules and additional scheduling details." The subcontract further provided, "A revised schedule will be published on the first day of every month for the duration of the project." West Coast Roofing could propose changes in the schedule by submitting them in writing by the twenty-fifth day of the prior month; such proposed changes, if accepted, would be included in the schedule. West Coast Roofing agreed that "the current month['s] schedule" would be part of the subcontract and that it "accept[ed] the changes as they are published unless otherwise . . . put in writing . . . ."

¶7 Section 5.2 of the subcontract provided:

> The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions . . . .The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work . . . .

Section 7.1.1 of the "General Conditions of the Contract for Construction" ("general conditions") which was expressly incorporated into the parties' subcontract, further provided: "Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by

Change Order, Construction Change Directive or order for a minor change in the Work . . . ." The general conditions defined a "Change Order" as a "written instrument" that states an agreement on a change in the work and adjustments to "Contract Sum and Contract Time." In contrast, a "Construction Change Directive" was defined as a written order directing a change in the work "prior to [an] agreement on adjustment" or "in the absence of total agreement."[1] Even "minor changes" in the work that did not involve the adjustment of contract sum or time were required to be "effected by written order."

¶8 Under section 9.5 of the subcontract, West Coast Roofing was required to "commence the Work when and where directed" by White Lightning "in accordance with [White Lightning's] progress schedule." West Coast Roofing was required to "prosecute the Work according to the Project schedule as directed by" White Lightning, and to "complete the Work . . . according to" White Lightning's schedule. White Lightning, for its part, retained the right to "change or amend the progress schedule according to the conditions encountered during the Project," and West Coast Roofing acknowledged that White Lightning reserved "the right to schedule the Work in any manner the Project requires." It further states, "If any controversy not settled by the parties arises in connection with this Agreement, then Subcontractor shall follow the written orders of the Contractor and shall not delay the performance of the Work."

¶9 It was undisputed (and found by the trial court) that the typical industry sequence leading to the completed installation of tile on a sloped roof is to frame the building, "dry in" the building by installing the underlayment on the roofing surface, "load" the roof tiles (that is, stack the tiles on the roofing surface), apply the building's exterior stucco, paint the stucco, install the metal drip edge to the roofing surface, and, finally, lay out the tile over the underlayment on the roofing surface. By December 2014, West Coast Roofing had installed the underlayment and loaded up the tiles on Phase I buildings. In 2015, the Project fell behind schedule, resulting in delays to the stucco installation on the buildings.

[1]Although the general conditions required such written directives to be signed by both the owner and architect, under Article 2 of the subcontract, White Lightning stood in the position of the owner and architect as to West Coast's obligations in the general conditions; that is, White Lightning could issue a written directive binding West Coast Roofing by its signature alone.

¶10 As of January 2015, the stucco work had not been completed, and none of the buildings had been painted, such as to allow West Coast Roofing to proceed with the installation of the drip edge and the remainder of its work on the tiled roofs in the typical industry sequence. The consequence was that the field tile was not laid out so as to cover the exposed roofing underlayment. In order for West Coast Roofing to secure a manufacturer's warranty on the underlayment, that underlayment could not be exposed to the elements for more than 180 days.

¶11 On January 7, 2015, West Coast Roofing notified White Lightning in writing by email that the underlayment on several buildings was approaching 180 days of exposure to the elements, jeopardizing its ability to secure the manufacturer's warranty. West Coast Roofing recommended covering the underlayment within "the next 30 days to stay within the [manufacturer's] exposure rate." White Lightning responded, asking for "a proposal for replacing the paper on a building and a separate line item to add flashing to a building."[2]

¶12 On January 16, 2015, in writing, West Coast Roofing asked for permission to begin laying up tile at the Project on one of the buildings. West Coast Roofing stated that if the tile was laid on the building "by the end of the month all warranties will still be in place." It then alerted White Lightning about the exposure deadlines for other buildings. West Coast Roofing then stated it would have the change order for "the fascia metal addition for the counter-flash/wrap . . . on Monday." White Lightning responded in writing by asking, "For clarity[:] 'The full roofing warranty is [intact]' . . . correct?" West Coast Roofing responded, "Yes, [the] full Manufacture[r] and West Coast Roofing warranties will be intact if we lay-up prior to 20th of Feb. Buildings 15, 16, 17. The other set of buildings are by March 20th and so on (depends on when they were dried in)."

¶13 On January 20, 2015, again by email, West Coast Roofing asked for permission to begin laying up tile on Building 15 and "to continue to install metal drip edge at tile dry-in starting January 22, 2015." White Lightning told West Coast Roofing to "proceed with the proof of concept as discussed. I will then provide written direction after review." The installation method proposed by West Coast Roofing was to install the metal drip-edge before stuccoing and painting, and then to lay out the tile

[2] The reference to "paper" appears to be to the replacement of underlayment which was approaching the 180-day exposure limit, and the reference to "flashing" to be to the proposed installation of counter-flashing discussed more fully below.

to cover the underlayment. West Coast Roofing further proposed that, after the later stuccoing and painting of the building, it would install a counter-flashing behind the drip edge and over the stucco termination. This solution would serve to protect the underlayment by covering it with tile while awaiting stuccoing, and then, when the counter-flashing was installed over the later-installed stucco surface, to preserve the watertight condition of the building at the point of stucco termination.

¶14 In February 2015, West Coast Roofing installed the drip edge and laid out the tile on (at least) five unstuccoed and unpainted Phase I buildings. Thereafter, on March 4, 2015, West Coast Roofing submitted a written estimate and written, proposed change order for the additional labor and materials to effect the counter-flashing solution throughout the Project, totaling $11,362.62 in additional costs. The estimate provided for West Coast Roofing to "[s]upply and install fascia counter flashings to cover exposed fascia and stucco termination. All buildings." The next day, March 5, White Lightning informed West Coast Roofing in writing that "we will ultimately opt to do this on the couple of buildings that are currently in [the] works and not on any of the future buildings. I would like to get something that I can get done site-wide, knowing that this helps us both." White Lightning did not issue any additional written order, change order, or directive regarding West Coast Roofing's proposed counter-flashing solution or immediately thereafter demand it otherwise complete its work.

¶15 In April 2015, West Coast Roofing again notified White Lightning in writing about the warranty issue due to the exposed sloped-roof underlayment on Phase II buildings and noted that the stucco would need to be "completed properly to avoid issues in the future." In May 2015, White Lightning proposed a work schedule in writing that did not include anything related to roofing. West Coast Roofing notified White Lightning that White Lightning's schedule did not call for any roofing work at that time. Also in May, West Coast Roofing told White Lightning in writing that it would be back on site in June "to finish the field tile lay-up to save the . . . underlayment" and that they hoped White Lightning "[would] have some buildings painted so [West Coast Roofing could] complete 100% and punch list during that time." White Lightning did not schedule West Coast Roofing to return to the Project, nor notify West Coast Roofing that the buildings were stuccoed, painted, and ready for tiling. Neither did it orally or otherwise accept West Coast Roofing's proposed change to the schedule. At no time between May and August, 2015, did White Lightning expressly demand West Coast Roofing's compliance with its proposed June installation of tile.

¶16 In August 2015, West Coast Roofing informed White Lightning in writing that the underlayment on Phase II buildings had expired due to exposure and could not be warrantied. West Coast Roofing provided three options for White Lightning: (1) White Lightning could agree to a proposed change order for additional work costing $103,486, which would "bring the work back to a point where [the] manufacturers will warranty their product"; (2) White Lightning could assume the risk, and disclaim, in writing, any warranty by West Coast Roofing and its manufacturers, along with paying $17,335; or, (3) White Lightning could agree to terminate the contract with West Coast Roofing and "move forward with another roofing contractor."

¶17 Also, as of the end of August 2015, West Coast Roofing had not yet completed the installation of the flat roofs on Buildings 15, 16, or 17 by applying the final roof coating. The roofing system on flat roofs calls for roof coating to be applied in multiple layers. The final coat on flat roofs is typically applied after all roof penetrations (such as those needed for plumbing, wiring and ventilation) have been completed and all other trades are off the roof. The final coat is applied only at the end, and after a final cleaning, to avoid having later to patch new roof penetrations.

¶18 No flat roofs were ready for the typical application of the final roof-coating product while West Coast Roofing was on the Project because other trades were still making roof penetrations. In August 2015, West Coast Roofing was notified by its supplier/manufacturer that, because the flat roofs had been exposed to the elements for more than a year without the final coating being applied, West Coast Roofing would need to apply the "KM XT Finalcoat"[3] product in order to receive the manufacturer's warranty. The KM XT Finalcoat was a more expensive product than that originally called for by the parties' contract. Consequently, on August 24, 2015, West Coast Roofing proposed a change order to White Lightning reflecting an increased cost of $6,435 for that product; White Lightning never accepted that change order.

¶19 On September 9, 2015, White Lightning, in writing, directed West Coast Roofing to "perform whatever work is necessary to complete the roofing systems under existing conditions so that all warranties required under the contract are provided to the Owner."[4] West Coast

[3]The product is referred to in testimony as "KM Extreme."

[4]There is no evidence in the record that, before September 9, 2015, White Lightning issued any written directive or scheduled West Coast

Roofing returned to the project site and performed work on two buildings or structures, but refused to perform work on Buildings 1 through 5 without a disclaimer of warranty. On September 18, 2015, White Lightning terminated West Coast Roofing. White Lightning then hired JL Braasch Roofing, Inc., to complete all unfinished roofing work. Among its other completion work, JL Braasch used the KM XT Finalcoat on the flat roofs as part of its base contract price.

¶20 In October 2015, White Lightning filed a complaint against West Coast Roofing, alleging breach of contract. West Coast Roofing counterclaimed alleging breach of contract, unjust enrichment, and lien foreclosure. After a non-jury trial, the trial court found the following relevant facts:

> A. . . .
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> 7. . . . West Coast proposed to install metal drip edges on the eave edges of the sloped roofs before stucco was installed—that is, out of typical construction sequence, which in turn would allow West Coast to cover installed roof underlayment to preserve materials warranties . . . .
>
> 8. White Lightning directed West Coast to proceed with installation of the drip edges throughout the Project while West Coast identified what other materials and work it believed were necessary to complete the eave edges, and West Coast did proceed with installing the metal drip edges.
>
> 9. . . . West Coast had installed drip edges out of sequence on all Project buildings and had installed field tile on a substantial number of Project buildings . . . . Nothing prevented West Coast from continuing to install field tile on the remaining Project buildings . . . .

Roofing to apply the final coat on any of the buildings before the other trades were finished with their work on the roofs.

> 10. West Coast's progress in continuing tile work on the sloped Project roofs showed that it was able to lay out tile once the drip edges were installed. This evidence was consistent with the testimony of West Coast's expert, who identified the out-of-sequence installation of metal drip edges as a "mechanism" that allowed the roofing contractor to continue its work.
>
> 11. . . . White Lightning directed West Coast not to proceed with the remaining steps it had proposed to cover exposed eave edges—a proposed counterflashing, instead instructing its stucco contractor to cover the eave edges differently.
>
> . . .
>
> 13. West Coast incurred no additional costs in proceeding with its work on the sloped roofs in a sequence that differed from typical construction sequence.
>
> 14. West Coast failed to return to the site to complete its Project work pursuant to its proposed completion schedule and White Lightning's direction.
>
> 15. White Lightning demanded West Coast [Roofing] complete its performance, but West Coast refused to perform as demanded, or as required by the parties' Contract.
>
> 16. Each circumstance[] that could have been material to which White Lightning pointed as "preventing" West Coast from completing its Project work arose before April 2015.

¶21 The trial court also found:

> B. . . .
>
> 4. White Lightning paid the Project completion contractor $117,000.00 to complete West Coast's

> scope of work, including a full warranty as described below.
>
> 5. The project completion contractor is contractually required to "[f]urnish 10 year full labor and material warranty on entire project including work done by others." ("This contract includes taking over full warranties for entire project, including work already performed.") Accordingly, White Lightning has a full contractual warranty from the completion contractor, and is not entitled to warranty related damages.

¶22 The trial court then concluded "West Coast [Roofing's] failure to complete its Project work, including its failure to complete its work following installation of the drip edges in the modified sequence it proposed, constituted a breach of its contractual obligations." By its unsigned ruling of September 15, 2017, the court awarded West Coast Roofing compensation for pre-termination work, and damages to White Lightning against West Coast Roofing for breach of contract. After off-setting these amounts, the court ruled White Lightning was entitled to $6,145.44 in net damages.

¶23 West Coast Roofing thereafter objected to White Lightning's application, as the nominal prevailing party, for fees and costs, in part based on its challenge to the trial court's calculation of damages. Among other assertions, West Coast Roofing argued that the court's damages award against it erroneously included $4,500 for the cost of installation of turbine vents, $1,000 for the cost of hip and ridge risers, and $6,543 for upgraded final roof coating material (KM XT Finalcoat) used by JL Braasch. White Lightning did not dispute that the damage award for the turbine vents was erroneous because installation of the turbine vents was outside of West Coast Roofing's original contract, but it did contend that damages for the hip and ridge risers and KM XT Finalcoat were proper.

¶24 The trial court treated West Coast Roofing's filing as a motion for reconsideration and reduced the original award by $4,500 for the turbine vents, but it found no evidence in the record of the cost of the hip and ridge risers to support any reduction in damages in that respect. As to the roof coating, the court refused to reduce the damages assessment because "the fact that a different coating system was required to finish the flat roofs stems directly from West Coast [Roofing's] failure to timely perform its project work." The court accordingly revised its damages award, reducing

the damages awarded to White Lightning to the net amount of $1,645.44. The court also awarded White Lightning judgment as prevailing party for attorney fees under A.R.S. § 12-341.01 in the amount of $59,108.24 and costs of $4,271, and as required by the contract.

¶25 This appeal followed. We have jurisdiction under A.R.S. §§ 12-120.21 and 12-2101(A)(1).

Analysis

¶26 "Whether a party has breached a contract is a question of fact." *Great W. Bank v. LJC Dev., LLC*, 238 Ariz. 470, ¶ 23 (App. 2015). "We review the trial court's findings of fact for an abuse of discretion." *Id.* ¶ 22. "Where there is conflicting evidence, we do not substitute our judgment for the trial court's and will reverse only where the findings are clearly erroneous." *Id.* Thus, we "examine the record only to determine whether substantial evidence exists to support the trial court's action. Substantial evidence is evidence which would permit a reasonable person to reach the trial court's result." *In re Estate of Pouser*, 193 Ariz. 574, ¶ 13 (1999) (citation omitted). We will uphold the trial court's judgment if it is correct for any reason. *In re Estate of Lamparella*, 210 Ariz. 246, ¶ 18 (App. 2005).

¶27 We are not bound, however, by the trial court's conclusions of law, which we review *de novo*. *SAL Leasing, Inc. v. State ex rel. Napolitano*, 198 Ariz. 434, ¶ 13 (App. 2000). We also review the interpretation of a contract *de novo*, and, as such, we are not bound by contractual interpretations of the trial court. *See United Cal. Bank v. Prudential Ins. Co. of Am.*, 140 Ariz. 238, 257 (App. 1983) ("It is fundamental that the interpretation of a contract is a question of law or, at most, a mixed question of law and fact, neither of which is binding on this court on review."). Thus, "[w]e may draw our own legal conclusions from any undisputed facts." *SAL Leasing, Inc.*, 198 Ariz. 434, ¶ 13.

¶28 On appeal, West Coast Roofing argues the trial court clearly erred in finding it had refused to perform as demanded, or as required by its contract with White Lightning. It argues that the contract requires any change in the work to be ordered in writing, that installing the drip edge and laying out the tile on the sloped roofs before stuccoing and painting was out of sequence and was a material change in the work, and that White Lightning never directed West Coast Roofing, in writing, to follow that out-of-sequence procedure. As such, West Coast Roofing maintains it was not in breach of contract. West Coast Roofing also argues the court erroneously awarded White Lightning damages for the more expensive final roof coating JL Braasch used. White Lightning argues that the court's ruling that

West Coast Roofing breached the parties' contract by refusing to finish its work is supported by substantial evidence and that the court's award of damages was correct.

White Lightning Was Required to Schedule, Direct, or Order West Coast Roofing in Writing to Lay Out the Tile on the Sloped Roofs Before Stuccoing and Painting of the Project Buildings

¶29 Under the subcontract, West Coast Roofing was required to follow any written schedule published by White Lightning, even if that schedule resulted in its work being completed prematurely or out of sequence. Additionally, if the parties disagreed about whether out-of-sequence work was a change in the work, White Lightning had the contractual power to issue a written order which West Coast Roofing was obligated to follow.

¶30 As detailed above, the typical industry sequence for the installation of tile on sloped roofs is to install the metal drip-edge and lay out the tile after the building is stuccoed and painted. The purpose of such a sequence is to ensure that the roof remains watertight at the eave edges where the roof meets the stuccoed walls. Additionally, following such a sequence prevents damage to the tiles from paint overspray and damage to the drip edge from being pulled back to apply the stucco underneath. The use of counter-flashing, which West Coast Roofing had proposed to solve the problems created by stuccoing after installing the drip edge, would have ensured water-tightness at the eave edges by serving as a barrier once slipped underneath the drip edge to cover the point of stucco termination. White Lightning conceded that, in the context of West Coast Roofing's proposed solution, the mechanism that would have solved issues arising from doing the roofing work out of sequence was the counter-flashing, not the drip edge.[5]

¶31 To the extent that the trial court implicitly found that doing work out of the typical industry sequence did not require a written order because it was not a change in the work, such a finding is not supported by the record. In order for West Coast Roofing to do its work properly, that is,

[5] We note that the trial court found that "the out-of-sequence installation of metal drip edges [w]as a 'mechanism' that allowed [West Coast Roofing] to continue its work." However, this finding is not supported by the evidence, as it was the use of counter-flashing that would have enabled West Coast Roofing to properly perform the out-of-sequence work.

in accord with typical industry practice, it was to lay out the tile after stuccoing and painting. For White Lightning to compel West Coast Roofing to deviate from that practice, the contract required a schedule, directive, or other order in writing doing so.[6]

¶32 Written direction under the subcontract by the general contractor may be by written directive or other written order, written change order or written and published construction schedule establishing a time-table for subcontractor work notwithstanding accepted industry sequencing. White Lightning issued a written order that West Coast Roofing was not to proceed with its proposed counter-flashing solution—that is with the installation of the drip edge and tile lay-out in anticipation of the use of counter-flashing—until White Lightning gave it further direction. No further written directive or order appears in the record until September 9, 2015. Similarly, no construction schedule in the record requires completion of the sloped roofing work before completion of stuccoing and painting of buildings. After April, 2015, West Coast Roofing was never scheduled to complete the roofing work.

¶33 Nonetheless, by its September 9, 2015, letter, White Lightning did finally direct West Coast Roofing "to complete the roofing systems *under existing conditions* so that all warranties required under the contract are provided. . . ." (Emphasis added). This constituted sufficient written direction to West Coast Roofing to complete its work then, as the buildings then sat, even if that meant completing its work out of sequence. Whether West Coast Roofing or White Lightning was contractually liable for White Lightning's damages—such as for the inability of West Coast Roofing to secure the manufacturer's warranty—could ultimately be resolved under the contractual dispute resolution procedures or by litigation. Consequently, although the trial court erred in determining *when* White Lightning directed West Coast Roofing to proceed with the work out of sequence, White Lightning did direct West Coast Roofing to do so on

[6]White Lightning argues that West Coast Roofing waived the written requirement as to the sloped roofs by installing the drip edge throughout the Project. However, because we conclude that White Lightning did provide written direction on September 9, 2015, and that West Coast Roofing thereafter breached the contract, we need not reach this issue. *See Progressive Specialty Ins. Co. v. Farmers Ins. Co.*, 143 Ariz. 547, 548 (App. 1985) (noting that appellate courts should not decide questions that have no practical effect on litigants' rights or that are unnecessary to disposition of appeal).

September 9, 2015, and, by failing thereafter to proceed with the completion of its work, West Coast Roofing was in breach of contract.

White Lightning Did Not Schedule West Coast Roofing to Complete the Flat, Coated Roofs Out of Sequence

¶34 West Coast Roofing also argues that the expense incurred by JL Braasch for KM XT Finalcoat was never part of West Coast Roofing's original contract with White Lightning, and, as such, this expense should not have been included in the trial court's award of damages against it. It argues that KM XT Finalcoat was needed solely because of the overall delays in the Project it did not cause. White Lightning argues that it was needed because West Coast Roofing had failed to put the final coat on the flat roofs before abandoning the Project.

¶35 It is undisputed that no buildings were ready for the application of the final coat to the flat roofs according to the typical sequence at the time White Lighting terminated West Coast Roofing; the roofs were still being penetrated during the work of other trades. There is no evidence in the record that White Lightning issued any written directive or scheduled West Coast Roofing to apply the final coat on any of the buildings—whether out of sequence or otherwise—before it sent its general directive of September 9, 2015.

¶36 Because White Lightning did not schedule or direct West Coast Roofing to apply the final roof coating before its September 9 directive to complete all work, West Coast Roofing was not in breach of its contract by not applying the final coating until then. At the time of that directive, the flat roofs had been exposed to the elements longer than a year, and, thus, the more costly roof coating was required to gain the manufacturer's warranty—whether applied by JL Braasch or West Coast Roofing. In either case, that more expensive roof coating was necessitated by the overall delays in the Project, which preceded September 9, 2015. The trial court therefore erred by not reducing White Lightning's award of damages by $6,435, the cost of KM XT Finalcoat.[7]

[7]West Coast Roofing also argues that the trial court erred by not reducing White Lightning's award by the cost of hip and ridge risers; however, as found by the court, there was no evidence as to the cost of those risers presented at trial. Even if we were to agree with West Coast Roofing, we will not disturb the award on this basis. *Cf. Fairway Builders, Inc. v. Malouf Towers Rental Co.*, 124 Ariz. 242, 247-48 (App. 1979) (vacating trial

Disposition

¶37 For the foregoing reasons, we affirm the court's determination that West Coast Roofing breached the parties' contract. We further reduce the damages award for White Lightning in the amount of $6,435, resulting in a net damages award in favor of West Coast Roofing of $4,789.56. Consequently, we also vacate the trial court's award of attorney fees and costs, and remand to the trial court for further proceedings consistent with this decision, including for the award of attorney fees and costs. *See* A.R.S. § 12-341.01; *Schwartz v. Farmers Ins. Co. of Ariz.*, 166 Ariz. 33, 38 (App. 1990) (decision as to who is the successful party for purposes of awarding attorney fees under § 12-341.01 is within the discretion of the trial court).

¶38 Both parties request attorney fees incurred on appeal under the terms of the contract or § 12-341.01. We award West Coast Roofing costs on appeal and reasonable attorney fees on appeal pursuant to the parties' contract and § 12-341.01 upon its compliance with Rule 21, Ariz. R. Civ. App. P.

court's award for damages when no evidence was presented at trial as to the amount of damages).